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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 RALEIGH DIVISION

MAR 9 1995

DAVID W. DANIEL, CLERK
U.S. DISTRICT COURT
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4 UNITED STATES OF AMERICA,)
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SENTENCING HEARING

DECEMBER 8, 1994

HONORABLE TERRENCE W. BOYLE

U.S. Court of Appeals
Fourth Circuit

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Appearances:

Ms. Christine B. Hamilton
Assistant United States Attorney
310 New Bern Avenue, Suite 800
Raleigh, NC 27601
(For the Plaintiff)

U.S. Court of Appeals
Fourth Circuit

FILED

APR 6 2001

Mr. David Long
POYNER & SPRUILL
Attorneys at Law
3600 Glenwood Avenue
Raleigh, NC
(For the Defendant)

1 THE COURT: United States versus Black. Good
2 morning, Mr. Long.

3 MR. LONG: Good morning, Your Honor.

4 THE COURT: Mr. Bennett, the 42 that is in
5 paragraph 29, is that before the guideline change or is
6 that still the correct number?

7 MR. BENNETT: Well, four levels are added to it.
8 That is with the change. It would still be 42 because of
9 the offense. Four additional levels are added. I think
10 he was charged with continuing criminal enterprise. That
11 calls for an additional four levels to be added to the
12 base offense level.

13 THE COURT: The base offense level tops out at
14 38 regardless of the amount of cocaine?

15 MR. BENNETT: That's correct.

16 THE COURT: Then the enhancement on base offense
17 level results from a CCE conviction?

18 MR. BENNETT: That's correct.

19 THE COURT: Otherwise if there is just the
20 conspiracy, there is no way you get past the conspiracy,
21 conspiracy under the 38 law?

22 MR. BENNETT: That's correct, Your Honor.

23 THE COURT: Any objections to the report?

24 MR. LONG: Your Honor, I set forth my objections
25 in the letter to the presentence officer and they are

1 addressed in the revised or the amended presentence
2 report, and I would carry those forward.

3 THE COURT: Well, the Court will deny the
4 objections and make a finding that the base offense level
5 is a 42 based on the relevant amount of cocaine, 49.4
6 kilograms of cocaine base and 16.62 kilograms of cocaine,
7 plus a conviction for continuing enterprise raises his
8 level by 4.

9 There is a 2 level increase for adjustment for
10 obstruction of justice and giving him a total offense
11 level of 44, but 43 is the highest measureable level, so
12 he is to be sentenced at level 43, category I, which is a
13 life imprisonment.

14 His guideline range for Counts 1 and 7 is life;
15 for Count 2 is life; for Count 3 is 60 months; Counts 21,
16 28, 32 through 35, 38 through 40, and 41 are 480 months.
17 He is not able to pay a fine or costs of incarceration.

18 Mr. Black, do you want to say anything about
19 your sentence? You are not required to, but you can if
20 you want to.

21 THE DEFENDANT: Yes, sir. I would like you to
22 know that I am not guilty of these charges they put on me.
23 At the time when I came to Mr. Simmons, I was in a very
24 bad accident from a motor bike and I asked him if I could
25 stay at his house, but at the time I came to his house, I

1 was under investigation with the police and after I found
2 out I left and went on joint time with the Court.

3 I told my lawyer to bring my doctor's papers and
4 prove the dates to show I was not in North Carolina and
5 the attorney didn't bring it to the Court to show I was
6 not in North Carolina, and what they were saying about Mr.
7 Black, the reason I parked my vehicle at Mr. Simmons',
8 they wanted to ask you for a ride and I told them I didn't
9 want to drive a vehicle. No drugs transported to that
10 vehicle. And they took it away for that vehicle. That
11 vehicle was not transporting no drugs.

12 The only reason for me to come to Mr. Simmons'
13 was because of Mr. Simmons -- because I was injured. My
14 arms, my pelvis, and my back part was broken up and I
15 asked him could I come to his house and stay, and
16 otherwise I was not going to his house and I didn't have
17 nothing to do with this.

18 I just got caught up at the investigation after
19 that time I left. I never came back to the house. I
20 don't see why I should be into this.

21 I am trying to explain everything to this. I
22 don't know nothing about what these men was going on and
23 my vehicle was not used for no transporting of no drugs. I
24 don't see why they bring me to the case.

25 The only reason I am into the case, the time I

1 came they was under investigation and I left and I did not
2 came back to North Carolina until when they came and
3 arrested me.

4 You wanted -- the marshal told me I don't have
5 nothing to do with it, but people is mentioning my name in
6 the cases and that was how I got involved with this.

7 I have proof and dates to show I was not in
8 North Carolina and my lawyer subpoenaed my paper work for
9 the hospital where I was, but he did not bring it to no
10 Court and I don't know why because I was not into North
11 Carolina when those things was going on.

12 THE COURT: That was all a mistake; wasn't it?

13 THE DEFENDANT: It was a mistake. At the time I
14 came to North Carolina, they put me into the
15 investigation. I did not get arrested for no drugs. I
16 didn't get arrested for no sorting, no drugs, no firearms
17 or nothing. I don't see why they put these charges on me.

18 I am not guilty of any of these things. If I
19 was guilty of any of these charges, I would be in North
20 Carolina when they got arrested, too.

21 I do cab driving for a living and I sweep out
22 restaurants and wash parts. That's what I do for a
23 living.

24 The only bit of drugs I do is I smoke a little
25 bit of marijuana, Your Honor. I don't do nothing else. I

1 don't see why -- I don't even know these policemen. I
2 don't know them and they don't know me and at the time
3 that I said, Your Honor, why I am into this is because I
4 was at this house while I was still under investigation
5 and that's why I am not involved in this. I am not
6 involved in nothing with the charges that is on me. I am
7 not involved, Your Honor.

8 THE COURT: Okay. Mr. Long?

9 MR. LONG: Well, just to set the record
10 straight, his hospital records were admitted into evidence
11 in this case. They are part of the record.

12 I guess he may be talking about something else,
13 but, you know, we did have the records and we did admit
14 the record into evidence.

15 THE DEFENDANT: Plus the dates prove to show I
16 was not in North Carolina when these things were going on.
17 I was not in North Carolina, so I don't see why I am
18 involved into charges like this.

19 I didn't see those people after I leave from
20 North Carolina and I didn't see those people for like two
21 years. I never see those people again and after that I
22 get arrested and they say I am into drug business see with
23 these people.

24 Mr. Simmons even has a son. I don't even see my
25 son in it. I don't see how I am -- how I am involved. If

1 I was down there, I would have seen my kid or something.

2 Until this day, I still don't see my kid.

3 THE COURT: Does the government want to say
4 anything?

5 MS. HAMILTON: Well, Your Honor presided over
6 the trial in this case and heard witness after witness
7 describe in intimate detail Mr. Black's involvement and
8 with Wayne Simmons and running the continuing criminal
9 enterprise.

10 THE COURT: I particularly recall the part about
11 him putting the gun in the person's mouth. How did that
12 go?

13 MS. HAMILTON: Yes, Your Honor. That was in
14 response to an individual who had failed to pay a drug
15 debt and outside of the VIP Lounge of which we heard a
16 great deal of testimony about what happened in there,
17 including Mr. Black's involvement at the VIP Lounge, Mr.
18 Black designing the method for keeping the police out of
19 the crack house.

20 In fact, we played two spearate tapes in the
21 courtroom where Mr. Black was negotiating a drug deal and
22 the evidence in the case was overwhelming as to Mr.
23 Black's involvement in this continuing criminal
24 enterprise.

25 THE COURT: All right. This will be the

1 judgment of the Court on Counts 1 and 7.

2 THE DEFENDANT: Excuse me, Your Honor.

3 THE COURT: Yes, sir.

4 THE DEFENDANT: What she was saying about the
5 guns and people, I could not order a gun. On both arms, I
6 got pins in my arm. I have pins all over my body. This
7 arm was broken. They was both in plastic parts. I can't
8 order a gun on a man. I have got a walker. I cannot do
9 those things.

10 I don't see why they are saying these things
11 about me. All those statements they give against me is
12 false statements, Your Honor. And there ain't nothing
13 true about that.

14 THE COURT: Okay. Okay. Thank you. This will
15 be the judgment of the Court. On Counts 1 and 7, the
16 defendant is confined to the custody of the United States
17 Bureau of Prisons for the duration of his natural life.

18 On Count 2, the defendant is confined to the
19 custody of the United States Bureau of Prisons for his
20 life.

21 On Count 3, he is sentenced to 60 years
22 consecutive to the life sentences previously imposed.

23 On Counts 21, 28, 32 through 35, 38 through 40
24 and 41 he is sentenced to a term of 480 months concurrent
25 to the sentences imposed in Counts 1 and 7 and 2.

You were convicted by a jury and you are
entitled to appeal your conviction and sentence to the
United States Court of Appeals for the Fourth Circuit
within the times provided by the Rules of the Appellate
Procedure, and I so notify you in open court.

11 Mr. Bennett, you obviously want to tell me
12 something.

13 MR. BENNETT: On Count 3, that was 60 months.
14 You meant to say 60 months on Count 3 and it was 60 years.

15 THE COURT: I am sorry. Sixty months. Yes,
16 sir. Anything else? Okay. That will be the judgment of
17 the Court.

18 MR. LONG: If Your Honor please, may we give
19 oral notice of appeal at this time?

THE COURT: Yes, sir.

21 MR. LONG: I would like to file a motion to
22 withdraw as counsel for the appeal.

1 appointment of substitute counsel or notify the public
2 defender's office for the assignment of substitute
3 counsel.

4 THE DEFENDANT: I will get myself a lawyer for
5 my appeal, Your Honor.

6 THE COURT: Okay. Thank you.

7 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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2 CERTIFICATE
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6 This is to certify that the foregoing
7 transcript of proceedings taken in the United States
8 Distirct Court is a true and accurate transcription
9 of the proceedings taken by me in machine shorthand
10 and transcribed by computer under my supervision.

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12 Dated this 9th day of March, 1995.
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20 Sharon K. Kroeger
21 Sharon K. Kroeger
 Court Reporter
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